IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE TENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT APPEAL No. 201 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 25/01/2005 in W.P.No.24348 of 2004 on the file of the High Court)

Between:

K.Sudarshan Reddy, S/o K.Narasimha Reddy,
R/o.H.No.5-11-186, Naimnagar, Hanamkonda,
Warangal.

..... APPELLANT

AND

1 Govt. of A.P. rep.by Secretary,

Road & Buildings Department, Secretariat, Hyderabad.
2 Chief Engineer, Road and Buildings, Erra Manzil, Hyderabad.
3 Superintending Engineer (R&B), Rural Circle, Balkampet, Hyderabad.
4 Commissioner, Commissionerate of Tender,

C-Block, 6th floor, B.R.K.R. Bhavan, Hyderabad.
5 M.Ramakrishna Reddy & Co., rep. by Managing partner,

R/o.H.NO.8-3-833/208, Phase II/5B, Kamalapuri Colony,
Hyderabad.

.....RESPONDENTS

Counsel for the Appellant: Mr. V.VENKATARAMANA

Counsel for Respondents 1 to 4: GP FOR ROADS & BUILDINGS

Counsel for Respondent No.5 : Mr. PRASADA RAO VEMULAPALLI

The Court made the following :

JUDGMENT : (per **C.V. RAMULU,J**)

This writ appeal is directed against the judgment of the learned single Judge dismissing W.P.No.24348 of 2004, dated 25-1-2005.

Writ petitioner in the above writ petition is the appellant herein. The parties are hereinafter referred to as arrayed in the writ petition.

The matter relates to allotment of tender. The writ petitioner as well as the 5th respondent submitted their tenders in pursuance of Tender Notification No.TSI/T4/1530/2004-05-5, dated 1-7-2004 for the formation of four lane road from Hyderabad-Srisailam to the proposed International Airport at Shamshabad. The writ petitioner has challenged the action of the official respondents in opening the price bid of the 5th respondent after the prescribed dates in the notification are over, as arbitrary and vitiated by favouritism.

It is the case of the appellant-writ petitioner that the 5th respondent has not enclosed the latest income-tax clearance certificate while submitting the tender and the said certificate was allowed to be furnished thereafter and; therefore, he has not fulfilled the essential conditions and as such, accepting the tender of the 5th respondent is bad in law.

Learned counsel for the 5th respondent submitted that the submission of the latest income-tax clearance certificate is not an essential condition and it is only ancillary and though the said certificate was submitted later on, it was submitted before opening of the price bid. Thus, the allotment of the contract in favour of the 5th respondent is not vitiated by law.

We have given our earnest consideration to the rival submissions made by the learned counsel for the parties and gone through the entire material on record including the impugned Judgment.

Shorn of all details, the only question that falls for consideration is as to whether respondents 1 to 4 have violated any of the essential conditions of the tender in allotting the same in favour of the 5th respondent, making the said allotment a nullity in the eye of law.

Relevant clauses in the Instructions to the Tenderers attached to the Notice Inviting Tender (NIT) dated 1-7-2004 may be noticed in this regard:

2. Firms Eligible to Tender:

2.1 The Firms who

i. Possess the valid registration in the class and category mentioned in the NIT and satisfy all the conditions therein.

ii. Are not blacklisted or debarred or suspended by the Government for whatever the reason, prohibiting them not to continue in the contracting business.

iii. Have complied with the eligibility criteria specified in the NIT.

3. Qualification data of the Tenders

3.1 The tenderer shall furnish the following particulars in the formats enclosed, supported by documentary evidence as specified in the formats.

a. Check slip to accompany the tender (in Annexure-I)

b. Attested copies of documents relating to the Registration of the firm, registration as Civil Contractor, Partnership deed, Articles of Association, Commercial Tax/Registration, Latest Income Tax Clearance certificate, Commercial Tax clearance certificate etc.

3.3 **QUALIFICATIONS CRITERIA FOR OPENING OF THE PRICE BID.**

A) **To qualify for opening the Price Bid each firm <u>in its name,</u> should have, during the last five financial years from** 1999-2000 to 2003-2004 (specify the financial years; those immediately preceding the financial year in which the tenders are invited).

a. Satisfactorily completed as a **PRIME CONTRACTOR,** similar works of value not less than Rs.273.98 lakhs (at current price level) in any one year.

<u>Note</u>:- The cost completed works of previous years shall be given weightage of 10% per year to bring them to current price level, (the financial year in which bids are invited).

b. Executed in any one year the following minimum physical quantities

i. Earth work excavation in all soils upto SDR:100460 cum

ii. Excavation in hard rock: 100460 cum

iii. PCC/VCC/RCC or any concrete item: 4320 cum

B) Each bidder should further demonstrate:

a. Availability (either owned or leased or to be procured against mobilization advance of the following key and critical equipment for this work

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No relaxation will be given to any of the qualification criteria

D. SUBMISSION OF TENDERS

16. Submission of Tenders:

1. The tenderer shall invariably ensure that the following are furnished in hard copy to the tender receiving authority, that is the Superintending Engineer, R&B, Rural Circle, Hyderabad one day before opening of the price bid besides uploading them on line.

1. Check slip
2. Copy of contractors registration certificate under appropriate class with Government of Andhra Pradesh.
3. Copy of PAN card along with proof of having a copy of latest income tax returns submitted along with proof of receipt.
4. to (l)....."

Clause 2 deals with firms eligible to tender. This has no much relevance for the purpose of our case. Clause 3 deals with qualification data of the tenderers and Clause 3.1 contemplates furnishing of particulars in the formats enclosed supported by documentary evidence as specified therein and Clause 3.1(b) also contemplates furnishing of attested copies of latest income-tax clearance certificate along with other certificates. Clause 3.3 indicates the qualification criteria for opening of the price bid. This does not make furnishing of latest income-tax clearance certificate, a must, along with tender schedule. Clause 16.1 contemplates furnishing of certain information in the hard copy to the tender receiving authority i.e. Superintending Engineer, Roads & Buildings, Rural Circle, Hyderabad, one day before opening the price bid besides uploading them on line.

In this case, admittedly, the technical bids were opened as scheduled on 23-7-2004 at 3.00 p.m., though the price bids of the qualified tenders were not opened as per schedule on 26-7-2004 at 3.00 p.m. In all, the 3rd respondent received five tenders and after evaluation, all the 5 tenderers were disqualified and he forwarded the same to the Chief Engineer (Roads) on 31-7-2004, who, in turn, sent the same to the Commissioner of Tenders on 13-8-2004 qualifying only one tenderer i.e. writ petitioner. In the meanwhile, the 5th respondent submitted latest income-tax clearance certificate on 9-8-2004 and the price bid was opened on 26-8-2004.

The 3rd respondent re-evaluated the tenders in pursuance of the directions of

respondents 2 and 4 and qualified the tender of the petitioner and opened the price bid on 26-8-2004 duly taking into account the solvency certificate furnished by the petitioner for Rs.400 lakhs issued by ING Vysya Bank, which was not considered earlier. However, the Government in its Memo No.9264/R.III/2/2004, dated 1-9-2004 issued instructions to the Chief Engineer to keep the subject work in abeyance with immediate effect and cause enquiry into the serious irregularities committed by the 3rd respondent in opening the bid of only one firm without following the tender conditions, even though the Commissioner of Tenders has instructed to act strictly as per the conditions. Therefore, the entire matter was kept in abeyance and the Chief Engineer, R&B and Member of COT was appointed as Enquiry Officer. The Enquiry Officer submitted a report that the disqualification of the 5th respondent was due to misinterpretation of the qualification criteria for opening of price bid. In view of the report submitted by the Enquiry Officer, the tender of the 5th respondent was accepted (qualified) and he was allotted with the work. He commenced and continuing the work as such.

From none of the above provisions, it can be culled out or understood that furnishing of latest income-tax clearance certificate is an essential condition. It was only an ancillary condition. Further, Government of India also issued instructions not to insist upon production of latest income-tax clearance certificate from the contractors, by its Memo dated 13-2-2003 addressed to all the Chief Commissioners of Income-Tax and the Directors General of Income-tax. Once the furnishing of latest income-tax clearance certificate is not a mandatory and essential condition, the only question that has to be considered is as to whether there is any *mala fide* or unreasonableness or arbitrariness in the decision making process. There is no such allegation as to *mala fides* against any of the official respondents. In this regard, the learned counsel for the 5th respondent rightly relied upon the Judgment of the Apex Court reported in **PODDAR STEEL CORPORATION V. GANESH ENGINEERING WORKS** and invited our attention to paragraph-6, which reads as under:

> 6**.** It is true that in submitting its tender accompanied by a cheque of the Union Bank of India and not of the State Bank clause 6 of the tender notice was not obeyed literally, but the question is as to whether the said non-compliance deprived the Diesel Locomotive Works of the authority to accept the bid. As a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender notice can be classified into two categories —

> those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases. This aspect was examined by this Court in *C.J. Fernandez* v. *State of Karnataka (1990) 2 SCC 488:9AIR 1990 SC 958)* a case dealing with tenders. Although not in an entirely identical situation as the present one, the observations in the judgment support our view……."

The difference of price offered by two tenderers cannot be a decisive factor. The decision is made by an expert body. In this regard, learned counsel for the 5th respondent also rightly contended that in this case no public interest is at stake and no *mala fides* are attributed to the official respondents. Insofar as public interest is concerned, the learned counsel relied upon the Judgment reported in **M/s. G.J. FERNADEZ v. STATE OF KARNATAKA** and drawn attention of the Court to the relevant portion in paragraph-16 of the said decision, which reads as under:

> "……..Thus, if a party does not strictly comply with the requirements of paras III, V or VI of the NIT, it is open to the KPC to decline to consider the party for the contract and if a party comes to court saying that the KPC should be stopped from doing so, the court will decline relief. The second consequence, indicated by this Court in earlier decisions, is not that the KPC cannot deviate from these guidelines at all in any situation but that any deviation, if made, should not result in arbitrariness or discrimination. It comes in for application where the non-conformity with, or relaxation from, the prescribed standards results in some substantial prejudice or injustice to any of the parties involved or to public interest in general. For example, in this very case, the KPC made some changes in the time frame originally prescribed. These changes affected all intending applicants alike and were not objectionable. In the same way, changes or relaxations in other directions would be unobjectionable unless the benefit of those changes or relaxations were extended to some but denied to others. The fact that a document was belatedly entertained from one of the applicants will cause substantial prejudice to another party who wanted, likewise, an extension of time for filing a similar certificate or document but was declined the benefit……."

For all the above reasons, we are of the considered opinion that non-furnishing of latest income-tax clearance certificate is not an essential condition in the instant case, since it was expected that it should be submitted one day before opening of the price bid. In this case, admittedly, the price bid was opened on 26-8-2004 and the 5th respondent submitted latest income-tax clearance certificate on 9-8-2004 itself. Further, there is no element of public interest involved in this case and no public interest suffered in view of the allotment of the tender in favour of the 5th respondent. Therefore, the decision making process in no manner vitiated and does

not call for interference of this Court. Thus the learned single Judge has rightly dismissed the writ petition. No grounds are made out to interfere with the well reasoned Judgment of the learned single Judge.

Accordingly, the Writ Appeal is dismissed; but without any order as to costs.

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B.Sudershan Reddy, J

10-3-2005

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C.V.Ramulu, J

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DEPUTY REGISTRAR

To

1 The Secretary, Road & Buildings Department,

Government of Andhra Pradesh, Secretariat, Hyderabad.
2 Chief Engineer, Road and Buildings, Erra Manzil, Hyderabad.
3 Superintending Engineer (R&B), Rural Circle, Balkampet, Hyderabad.
4 The Commissioner, Commissionerate of Tender,

C-Block, 6th floor, B.R.K.R. Bhavan, Hyderabad.
5 The Managing Partner, M/s.M.Ramakrishna Reddy & Co.,

R/o.H.NO.8-3-833/208, Phase II/5B, Kamalapuri Colony,
Hyderabad.

6. 2 CCs to Govt.Pleader for Roads & Buildings, High Court Buildings, Hyderabad (OUT)

7. 2 CD copies